

**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

APPEAL OF:

TECHNOPREF INDUSTRIES, INC. )

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CAB No. D-1566

Under Contract No. DCKA-2014-C-0074 )

**ORDER PARTIALLY GRANTING APPELLEE’S MOTION FOR AN EXPEDITED  
SUBPOENA**

*Filing ID # 66471199*

Before the Board is Appellee’s March 25, 2021, Motion for an Expedited Subpoena, the Appellant’s opposition thereto, the Appellee’s reply to the Appellant’s opposition, and the entire record herein. The Appellee seeks expedited issuance of a subpoena to depose Ali Soltani in person on April 2, 2021, in the District of Columbia. Soltani is a former employee of the Appellant, and is alleged by the District to have been Appellant’s project manager during performance of part of the underlying 2016 contract for rehabilitation of the Francis Scott Key Bridge and G.W. Key Bridge in the District. (*See generally* Appellee District of Columbia’s Expedited Mot. for Issuance of Subpoena to Ali Soltani for Deposition at 1-8, 9.)

In its motion, the District argues that an expedited subpoena is appropriate because Soltani is preparing to leave the United States for Mexico on April 10, 2021, without any definite plans to return. (*See id.* at 3-4.) Appellant opposes the District’s motion, arguing, *inter alia*, that (1) Soltani is allegedly willing to cooperate in a video deposition at any time; (2) the motion should be denied pursuant to Board Rule 114.8 because it allegedly imposes an undue burden on Appellant’s Washington state based counsel to fly without vaccination from Washington state to the District during the ongoing COVID-19 pandemic emergency; and (3) the District’s motion fails to comply with Board Rule 114.3 because it was not filed at least 15 days before the deposition is set to take place. (*See generally* Appellant’s Opp’n to District’s Expedited Mot. for Issuance of Subpoena to Ali Soltani for Deposition at 1-7.)

The Board held a telephone status conference with the parties regarding the proposed subpoena on March 30, 2021, at 1:00 p.m. Attending for the Appellant was John C. Theiss, Esq. Attending for Appellee, the District of Columbia, were Brett A. Baer, Esq. and Sharon G. Hutchins, Esq. At the status conference, the Board asked the parties to state their positions on conducting a video-conferenced deposition either on the date requested by the District, or on a mutually-agreeable alternative date. Both parties were initially willing to conduct a video-conferenced deposition, and the Board recessed temporarily to permit the parties to discuss alternative dates for a video-conferenced deposition with Soltani. When the Board reconvened, the parties represented that Soltani was unwilling to appear for a deposition prior to his departure for Mexico on any date other than April 2, 2021. The District’s counsel further represented that Soltani complained that a video-conferenced deposition worked a hardship because Soltani lacked a computer (although Soltani informed the District’s counsel that he (Soltani) has a smartphone device).

The issue presently before the Board is whether the District’s motion for an expedited subpoena should be granted—either in its current form, or with safeguards to address Appellant’s claims of undue hardship. For the reasons discussed below, we conclude that Appellee’s motion should be partially granted.

The D.C. Superior Court Rules of Civil Procedure, which the Board looks to for guidance when interpreting its own rules (*see* D.C. Mun. Regs. tit. 27, § 100.5), allow for the taking of depositions by remote means, and allow the court to limit the time for a deposition to less than seven hours. *See* D.C. Super. Ct. R. Civ. P. 30(b)(4), 30(d)(1). In addition, Board Rule 114.8 allows the Board to grant party requests “to quash or modify the subpoena if it is unreasonable and oppressive[,] or for other good cause shown.” D.C. MUN. REGS. tit. 27, § 114.8(a) (2020).

In the instant case, a material witness—a former project manager with personal and direct knowledge of the circumstances under which Appellant’s alleged claims began to accrue—may become unavailable if a deposition is not conducted on April 2, 2021. Moreover, many of the circumstances leading to the alleged claims herein occurred approximately five years ago (i.e., beginning in 2016) and no depositions have taken place yet. The Board will promote fair dispute resolution best under these circumstances by permitting the District to depose Soltani before he becomes unavailable, or further time elapses from the original dates that these alleged claims began to accrue.

The Board, however, is also mindful of Appellant’s concerns regarding the risk associated with air-travel during the COVID-19 pandemic, the short notice given to Appellant’s counsel to prepare and arrange his schedule for an April 2 deposition, the three-hour time difference between Washington state and Washington, D.C., and the potential prejudice to Appellant’s counsel of not being present for an in-person deposition that Appellee’s counsel would attend in-person.

Therefore, upon consideration of Appellee’s motion, Appellant’s opposition thereto, Appellee’s reply thereto, and the entire record herein, and good cause having been shown, the Board grants Appellant’s Expedited Motion for Issuance of a Subpoena under the terms and conditions noted herein:

- (1) the deposition shall occur between the hours of 10:30 a.m. and 2:30 p.m. Eastern time on Friday, April 2, 2021, or during any other four-hour period that same day that is mutually-agreeable to the witness and both parties; and
- (2) the deposition shall be conducted using video conferencing technology only—that is, neither party may be present in the room with the witness during the video deposition.<sup>1</sup>

The Board’s staff will contact the District to facilitate delivery of an executed subpoena subject to the above limitations.

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<sup>1</sup> The District may provide Soltani with video conferencing facilities or equipment, if necessary, but shall not remain in the same room as Soltani during the video deposition.

**SO ORDERED.**

Date: March 30, 2021

/s/ Marc D. Loud, Sr.  
MARC D. LOUD, SR.  
Chief Administrative Judge

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